IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1996 of 2005

Between:

Karnati Papamma, W/o. Satyanarayana,
R/o. Kakarla Village, Julurpad Mandal, Khammam District.

..... PETITIONER

AND

1 Agent to Government (District Collector), Khammam.
2 The Additional Agent to Government, and Project Officer, ITDA, Bhadrachalam, Khammam District.
3 The Special Deputy Collector, (Tribal Welfare) Palvoncha, Khammam District.
4 The Mandal Revenue Officer, Julurpad Mandal, Khammam District.
5 Cherkumalla Narayana, S/o. Seethaiah,
R/o. Kakarla, Julurpad mandal, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue such appropriate order or orders or direction to the respondents more so particularly one in the nature of Certiorari calling for the records pertaining to LTR Case No. 1161/1994/JLP from the file of the 3rd respondent and C.M.A.No. 1 of 2003 from the file of the 2nd respondent quashing the orders of the 3rd respondent dated 15-5-1996 in LTR Case No. 1161/1994/JLP which was confirmed by the 2nd REspondent by his order dated 16-10-2004 in C.M.A.No. 1 of 2003 and pass such other order as the Hon'ble Court may deem just and under the circumstances of the case.

Counsel for the Petitioner: MR.HARI SREEDHAR

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 1996 of 2005

O R D E R:

Challenging the order in C.M.A. 1 of 2003 on the file of Additional Agent to the Government and Project Officer, ITDA, Bharachalam (2nd respondent herein), the present writ petition is filed.

The 3rd respondent initiated proceedings under Section 3 of the A.P. Scheduled Areas Land Transfer Regulation, 1959 (Regulation 1/1959) against the petitioner vide LTR Case No.1161/1994/JLP in respect of land to an extent of Ac.4-00 out of S.No.23 of Kakarla village of Khammam District. According to him, he purchased the land admeasuring Ac.3-30 guntas out of S.No.23 of Kakarla village and has been in possession and enjoyment of the same. However, the 3rd respondent passed the eviction order against the petitioner on 15.5.1996. Against the same, he filed a civil miscellaneous appeal before the 1st respondent, who transferred it to the 2nd respondent and the said appeal was numbered as C.M.A. 1 of 2003 and it was dismissed on 16.10.2004 confirming the order of the 3rd respondent. Hence the writ petition.

The contention of the learned counsel for the petitioner is that Regulation 1/1959 does not confer any power on the 1st respondent to transfer any appeal filed under Section 3(3) to the file of 2nd respondent and therefore it is illegal and Regulation 1 of 1970 came into force w.e.f. 3.2.1970 and further the authority has no jurisdiction to go into the validity or invalidity of any transaction of the document; that Regulation 1 of 1959 does not disclose that the

assent of the President as required under para 5(4) of the V Schedule of the Constitution of India has obtained. Therefore, Regulation 1 of 1959 as amended by Regulation 1 of 1970 shall not have any effect. Hence he prays to admit the writ petition.

On the other hand, learned Government Pleader contended that the statutory revision lies before the Government and the validity of Regulation 1 of 1959 as amended by Regulation 1 of 1970 has not been challenged before this court and on facts it is for the revisional court to decide. He further contended that as per the Government Order the Project officer, ITDA, Bhadrachalam is designated as Additional Agent to the Government and therefore he is competent to try the case. Therefore, there are no grounds to admit the writ petition.

As per para 5(2) of the V Schedule of the Constitution of India, the Government may make regulation for peace and good governance of any area in the State which is for the time being a schedule area. Para 5(5)(4) reads that all the regulations made in this paragraph shall be submitted forthwith to the President and until assented by him shall have no effect.

Relying upon para 5, the learned counsel for the petitioner contended that since Regulation 1 of 1959 as amended by Regulation 1 of 1970 is not received the assent of the President, it has no effect and the order passed by the 3rd respondent as confirmed by the 2nd respondent is without authority.

The challenge to Regulation 1 of 1970 is taken as one of the grounds and the said Regulation has not been specifically challenged by the petitioner. In any view of the matter, a Division Bench of this court in **G.L. Murthy v. State of A.P.** held, “to further safeguard and protect the interests of the Scheduled Tribes, which is the constitutional responsibility of the Governor, the present regulation had to be passed in consultation with the A.P. Tribes Advisory Council”.

The President accorded his assent on 4.3.1959. The Regulation 1 of 1959 is under challenge before this court wherein this court held that the Regulation is valid and constitutional. Therefore, the contention of the learned counsel for the petitioner is wholly untenable and devoid of merit.

With regard to the 2nd contention that the 1st respondent-Agent to the Government has no jurisdiction to transfer the case to the 2nd respondent, no doubt it is a fact that there is no provision in the Regulation 1 of 1970 or Regulation 1 of 1959 to the effect that the Agent to the Government can transfer the case to the Additional Agent. It is not disputed before this court that the 2nd respondent was designated as an Additional Agent to the Government by the Government by virtue of a Government Order. After designation of the Project Officer as Addl. Agent to the Government, the cases pending before the 1st respondent have been transferred to the 2nd respondent. When the Agent to the Government was given power to take a case on file, it is implied that he has got power to transfer the same to the Additional Agent. It is an incidental power and does not require any specific provision. The definition of Agent under Section 2(b) of Regulation 1 of 1959 reads as follows:

> "Agent means the person designated by the State Government as an Agent to the Government in the districts of East Godavari,West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam or Mahaboobnagar) as the case may be".

Admittedly the 2nd respondent was designated as Addl. Agent to the Government. Therefore, when the 1st respondent is empowered to take the case into cognizance and has power to dispose of the same, then he has an incidental power to transfer the same to the Addl. Agent to the Government. Therefore, the contention of the learned counsel for the petitioner is unacceptable.

Originally the case is initiated under Rules 7(1) and 7(2) of the A.P. (Scheduled Areas) Land Transfer Regulation Rules 1969. Under Rule 8(1) of the Regulation 1 of 1959, the State Government may from time to time make rules to carry out the purpose of this Regulation. Those rules do not require any assent of the President. The Special Dy. Collector is competent to decide the suit. Under Section 6 the State Government may revise any order, decree passed by the Agent, Agency Divisional Officer or any other prescribed officer under this Regulation. Therefore, the petitioner has to approach the Government which is the statutory revisional authority. The contention that Act 1 of 1970 is a prospective one or whether those authorities are entitled to decide the issue of registration of document or not are required to be decided by the revisional authority because these are questions of fact.

It is no doubt true that alternative remedy is not a bar to exercise the jurisdiction of this court, but at the same time it is not a case where the fundamental rights of the petitioner have been infringed or that there is violation of principles of natural justice or that the authority who passed the order has no jurisdiction at all. Since the case on hand does not come within any of the aforesaid three requirements, the writ petition deserves to be disposed with a direction to the petitioner to avail the statutory remedy available in law, if he is so advised.

The writ petition is accordingly disposed of with the above direction.

K.C. Bhanu, J.

DATE: --03—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Agent to Government (District Collector), Khammam.
2 The Additional Agent to Government and Project Officer, ITDA, Bhadrachalam, Khammam District.
3 The Special Deputy Collector, (Tribal Welfare) Palvoncha, Khammam District.
4 The Mandal Revenue Officer, Julurpad Mandal, Khammam District.
5. Two C.Cs. to the G.P. for Social Welfare, High Court Buidings, Hyderabad (OUT).

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